

APR 29 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL RYTTING,

Plaintiff - Appellant,

v.

RAY ALLEN,

Defendant - Appellee.

No. 06-15858

D.C. No. CV-05-00744-PMP/PAL

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Philip M. Pro, District Judge, Presiding

Submitted April 13, 2009<sup>\*\*</sup>

Before: GRABER, GOULD, and BEA, Circuit Judges.

Michael Rytting, a Nevada state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly determined that Rytting failed to exhaust prison grievance procedures prior to filing suit in federal court. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (holding that “proper exhaustion” requires adherence to administrative procedural rules); *McKinney v. Carey*, 311 F.3d 1198, 1199-1200 (9th Cir. 2002) (per curiam) (holding that exhaustion under 42 U.S.C. § 1997e(a) must occur prior to commencement of the action). We construe the district court’s dismissal to be without prejudice. *See Wyatt*, 315 F.3d at 1120.

In light of this disposition, we do not reach any alternate bases for dismissal relied upon by the district court.

Rytting’s pending motions are denied.

**AFFIRMED.**